

**IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA**

**JAMES RIVER EQUIPMENT,
VIRGINIA, LLC, a Virginia Limited
Liability Company,**

PLAINTIFF,

v.

**Civil Action No. 5:13-cv-28160
Honorable Irene Berger**

**JUSTICE ENERGY COMPANY, INC. a
West Virginia Corporation,**

DEFENDANT.

MOTION FOR APPOINTMENT OF COMMISSIONER

NOW COMES Plaintiff James River Equipment, Virginia, LLC, (“James River”) through counsel, Jason S. Hammond and the law firm Bailey & Wyant, PLLC and respectfully requests that this Court enter an Order appointing a Commissioner to conduct proceedings in aid of execution upon James River’s judgment against Justice Energy Company, Inc. (“Justice Energy”) in this matter.

On January 21, 2014, this Court entered its Order granting James River judgment against Justice Energy in the amount of \$156,112.36, with post judgment interest accruing at the rate set by 28 U.S.C. § 1961. James River has requested an Abstract of Judgment and has recorded the same. Additionally, a Writ of Execution has been issued and unreturned.

Federal Rules of Civil Procedure 69 (a) provides that “procedure upon execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the State where the Court is located. “ In West Virginia, ascertainment of the estate of a judgment debt against which the Court’s Writ of Execution is accomplished through proceedings before a Commissioner in Chancery in the county in which the debtor resides. *West*

Virginia Code § 38-56-1. The Defendant Justice Energy Company, Inc. resides in Raleigh County, West Virginia and so a Commissioner with jurisdiction in Raleigh County would be appropriate.

In accord with the foregoing, James River Equipment, Virginia, LLC respectfully requests that the Court appoint United States Magistrate Judge R. Clarke VanDervort or as designee to act as Commissioner in aid of execution of the Court's judgment Order.

**Respectfully Submitted,
James River Equipment,
By Counsel,**

/s/ Jason S. Hammond
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**MOTION FOR APPOINTMENT OF COMMISSIONER**” was served upon the following parties by U.S. Mail certified, return receipt requested on this day, Wednesday, July 16, 2014:

Justice Energy Company, Inc.
100 Cranberry Creek Drive
Beckley, West Virginia 25801

/s/ Jason S. Hammond

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